



OFFICE OF THE INDEPENDENT POLICE AUDITOR

CITY OF SAN JOSÉ

FEBRUARY 1997

VOLUME 3

1996 YEAR END REPORT

The 1996 Year End Report was released on February 7, 1997. For a copy of the report, please contact the City Clerk's Office.

- ✓ **581 complaints were filed in 1996 representing a 27% increase compared to 1995:** Unnecessary Force allegations decreased 17% for the third straight year. Twenty-three percent of the 1996 closed formal complaints were sustained.
- ✓ **Citizen Requests for Officer Identification:** In an effort to reduce complaints in this area, the Police Auditor recommends that every officer use department issued business cards in response to citizens inquiring about an officer's name and/or badge number.
- ✓ **Auditor recommends new classification and prioritization of use of force complaints:** Class I (priority cases) will involve cases where the complainant's injuries required medical care and will be investigated within 180 days. Class II will include all other types of use of force (like tight handcuffs, pushing, bruising, etc.)
- ✓ **1996 Statistical analysis:** Complaint information comparatively analyzed for the years 1994 through 1996, including background information about subject officers and complainants, complaint allegations, incident times, and incident location listed by San José Council Districts.
- ✓ **64% of votes elect to add Auditor's office to City Charter:** Election established the IPA as a permanent city office.



NEW ISSUE

CITIZEN REQUESTS FOR OFFICER IDENTIFICATION



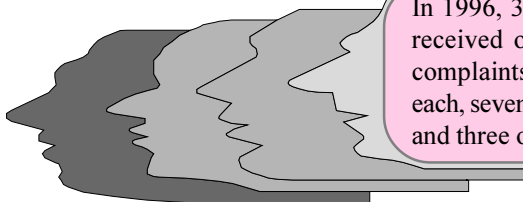
A conflict may arise in situations where citizens request identification information from police officers. Forty (40) citizen complaints were identified and analyzed in which officer identification was an issue. The San José Police Department's Duty Manual requires officers to provide citizens with their identification, it does not specify how this identification should occur. The IPA conducted interviews with the Deputy Chief of the Bureau of Field Operations, the Research and Development Unit, and several police officers to obtain insight on this issue.

In 16 complaints, it was alleged that the officer's failure to provide identification was the primary factor in filing a complaint and in the remaining 24 cases, it was found to be a secondary issue. In 28 of the 40 complaints, the citizen's alleged request did not appear to have been made at a time when complying with the request would have jeopardized the officer's safety, or impeded the officer's duties. In two cases, the requests appeared to have been made at a time when it was not prudent or safe for the officer to comply. In ten cases, it was not possible to determine whether it was prudent for the officer to comply.

Retaliatory conduct by the subject officer(s) was alleged in 13 of the 40 complaints. The alleged retaliatory conduct ranged from threats of arrest to unnecessary use of force. The audit revealed that in some situations officers called out their names or pointed to their name tags. However, complainants may not have had either a pen or paper available to document the information.

Currently, officers are provided with in-house business cards by the Police Department. However, Department policy does not require that the officers use these business cards as a mean of identifying themselves to the public. Officer interviews revealed that some officers were willing to write their names for citizens, others candidly admitted that they would not, especially if a citizen displayed a bad attitude. Other officers commented that it was common practice to provide business cards to the public and viewed the practice as a good public relations tool. The dissatisfaction with the appearance and the problematic process of obtaining business cards were two reasons stated for not using department issued cards.

RECOMMENDATION: To provide a meaningful manner of providing identifying information to the public while not creating an added task for the officer, it is recommended that every officer be provided department issued business cards to hand to citizen inquiring about an officer's name and/or badge number. The process for ordering, printing, and distributing business cards should be revised.



In 1996, 308 officers received complaints: 233 received one complaint each, 53 received two complaints each, 16 received three complaints each, seven officers received four complaints each, and three officers received five complaints each.

Established to audit the investigations of citizen complaints regarding misconduct by the San José police officers, the IPA officially opened on September 13, 1993. The IPA is independent from all other City departments and reports directly to the Mayor and to the City Council. The IPA has three primary functions: (1) to provide an alternative forum where citizens may file complaints; (2) to review the investigations of citizen complaints conducted by the San José Police Department's Professional Standards and Conduct Unit (PSCU); and (3) to promote public awareness of a citizen's right to file a complaint.

CHARTER CHANGE



On November 5, 1996, citizens determined by majority vote that the IPA should be added to the City Charter known as Measure E on the November Ballot. The San José City Charter was amended to give the IPA charter status and to provide the same protections and autonomy as the Office of the City Auditor.

The Police Auditor will be appointed by the City Council to serve four-year terms subject to removal during a term only by a vote of at least ten of the eleven City Council members. The City Charter may be amended only by vote in a municipal election. Thus, the elimination or any major changes in the duties and responsibilities of the IPA will require a vote of the people.

POLICY and PROCEDURAL CHANGES

COMPLAINT CLASSIFICATION

To ensure that use of force cases are investigated in a timely and thorough manner, two categories of use of force complaints will be implemented in 1997. The first (Class I) will involve those complaints in which the complainant require medical assistance for their injuries. These cases will be given priority and their investigation will be completed within 180 days. Class II complaints will include those complaints in which the complainant did not require medical care, such as tight handcuffs, bruising, pushing, or shoving. Class II cases must be completed within 365 days.

LENGTH OF TIME TO COMPLETE INVESTIGATIONS

The time line for investigation completion of citizen complaints was examined in 1996. A new set of goals will be implemented in 1997 which will require that 100% of the investigations be classified within 30 days. Class I use of force cases must be completed within 180 days and 100% of all investigations must be completed within 365 days.

UPDATES ON PRIOR ISSUES AND RECOMMENDATIONS



NEW COMPUTER SYSTEM

To make the sharing of complaint information between the offices more efficient, a new computer link-up between the IPA and the PSCU was studied and designed. With the help of an outside consultant and police and city computer data managers, a system was devised which will begin testing in February 1997. The new system will enable the IPA to have more timely complaint information without compromising data security. Eventually, this new system will enable the IPA to join the City's Internet Network.

THE BOLAND ADMONISHMENT

A law that makes it a misdemeanor to knowingly file a false misconduct allegation against any peace officer also requires that the complainant sign a Boland Admonishment form. Intake investigations are conducted for all Boland Admonishment cases. An audit form was implemented for cases closed because of the Boland Admonishment; the audit results will be reported in the 1997 Midyear report. In 1996, 31% of all cases received were closed due to the lack of a signed Boland Admonishment.

ADDITIONAL SPACE AT PSCU

A pending recommendation made in the 1995 Year End Report was to secure office space which would adequately serve as an interview room when receiving a complaint or for interviewing witnesses and police officers. Office space adjacent to the PSCU is available and negotiations are underway to annex the space.

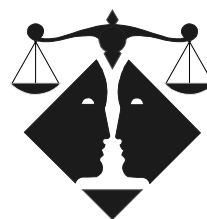
AUDIT OF DEPARTMENT-INITIATED COMPLAINTS

Department-Initiated complaints are those complaints initiated by the Chief of Police, which allege a serious violation of Department policy or a violation of law by an officer. Such complaints may involve internal police personnel issues or may involve citizen complaints. For example, a citizen may file a complaint with serious allegations (like the use of force or sexual assault) and then not follow through with the complaint. Because of the seriousness of the allegations, a Department-Initiated complaint may be initiated by the Chief of Police. The issue of whether the IPA should audit Department-Initiated cases was researched by the City Attorney's Office. A memorandum presented to the Mayor and City Council with the 1994 IPA's Year End Report, concluded that the IPA has authority to audit Department-Initiated complaints with a nexus to a citizen complaint.

Four different PSCU Commanders have been assigned to the PSCU unit in the past three years. Each time a new Commander begins at the PSCU, the issue of the IPA's authority to audit Department-Initiated complaints arises. The current PSCU commander is working with the City Attorney's Office to determine whether IPA review, in some cases, is applicable. This disruption in the process of auditing complaints creates unnecessary delay in auditing these complaints.

RECOMMENDATION: The City Attorney's memorandum to the City Council dated October 3, 1994, should be updated and become part of the IPA and the PSCU written policies and procedures. It should be clearly stated that those complaints initiated by the Chief of Police having a nexus to a citizen complaint shall be processed and audited in the same manner as Citizen Initiated complaints. Additionally, this policy should state that subsequent PSCU Commanders will give the policy full force and effect.

CHARTER CHANGE



The following is a breakdown of the total 581 complaints received from January 1 to December 31, 1996. The IPA initiated 27% of the total complaints received in 1996. There was a 27% increase in complaints filed in 1996 compared to 1995

ALL COMPLAINTS RECEIVED January 1 - December 31, 1996	
Citizen-Initiated (CI) Complaints	242
Department- Initiated (DI) Complaints	82
Informal (IN) Complaints	93
Policy (PO) Complaints	37
Procedural (PR) Complaints	91
In-Process	36
TOTAL	581

YEAR END STATISTICS

The number of new complaints (581) filed at the Professional Standards and Conduct Unit (PSCU) and at the Office of the Independent Police Auditor (IPA) increased 27% in comparison to 1995. The chart below reflects the increase in each classification but does not include 36 In-process complaints waiting to be classified.

Comparison of All Classifications

Period Received	CI	DI	IN	PO	PR	Total Cases
Jan. - Dec. 1994	217	75	67	17	75	451
Jan. - Dec. 1995	176	71	95	8	106	456
Jan. - Dec. 1996	242	82	93	37	91	545

The number of Formal Complaints initiated by citizens increased from 176 complaints in 1995 to 242 in 1996. The number of Formal Complaints initiated by the Chief of Police increased from 71 in 1995 to 82 in 1996. The total number of allegations also increased in both Citizen-Initiated and Department-Initiated cases. However, for the third year in a row, the number of 1996 Unnecessary Force allegations decreased 17%.

Sustained Rate for Formal Complaints

Period Received	Cases Filed	Open Cases	Closed Cases	Sustained Cases	Sustained Rate
Jan. - Dec. 1994	292	9	283	76	27%
Jan. - Dec. 1995	247	37	210	61	29%
Jan. - Dec. 1996	324	126	198	46	23%

The sustained rate of formal complaints varies until all open cases from the listed years are closed.

STATISTICAL BACKGROUND OF SUBJECT OFFICERS

The IPA tracks the statistical background of officers for complaints including the police unit, gender, ethnicity, and years of experience of the subject officer. Most complaints involved officers assigned to the Bureau of Field Operations. Subject officers with two to four years of experience received the highest number of complaints. These officers comprised 24% of officers receiving complaints and accounted for 14% of all officers in the San José Police Department. Officers with more than 16 years of experience followed closely, accounting for 23% of all officers receiving complaints while comprising 33% of all officers in the Police Department.

STATISTICAL BACKGROUND OF COMPLAINANTS



The IPA utilizes a Voluntary Questionnaire to request and track statistical information about complainants. The survey requests information such as the complainant's occupation, primary language, ethnicity, educational level, gender, age range, and type of referral to either the IPA or the PSCU. The occupation of the complainants was varied, English is the primary language, Hispanic/Latino was the highest ethnicity reported, 39% indicated some college education, 55% were male, and the majority of complainants were in the age range of 31-59 years.

COMPLAINTS BY CITY COUNCIL DISTRICT

The following table illustrates the total number of all complaints received by each City Council District; however, the complaints categorized as In-Process are not included because their classification is pending in this reporting period.

Summary of Complaints Received January 1 - December 31, 1996

Council District	Type of Complaints					Total Cases	%
	CI	DI	IN	PO	PR		
1 JOHNSON	8	2	5	3	8	26	5%
2 POWERS	21	3	10	2	6	42	8%
3 PANDORI	75	43	23	18	26	185	34%
4 FERNANDES	13	8	8	3	3	35	6%
5 DIAZ	28	4	8	4	10	54	10%
6 FISCALINI	26	6	11	2	3	58	11%
7 SHIRAKAWA, JR.	18	0	5	2	7	32	6%
8 WOODY	16	3	11	2	4	36	7%
9 DIQUISTO	13	2	3	0	9	27	5%
10 DANDO	20	3	9	1	3	36	7%
Unknown/Outside City Limit	4	8	0	0	2	14	3%
TOTAL CASES	242	82	93	37	91	545	100%
%	44%	15%	17%	7%	17%	100%	

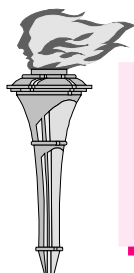
Legend: CI = Citizen-Initiated, DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural

UNNECESSARY FORCE COMPLAINTS

One hundred (116) Unnecessary Force (UF) allegations from the Citizen-Initiated (CI) complaints were filed between January 1 through December 31, 1996. When compared to the two previous time period, UF allegations decreased by 17% compared to 1995 and 42% compared to 1994.

The Office of the Independent Police Auditor (IPA) tracks the type of force the subject officers used as alleged by the complainant. The statistics in the following table were based on 79 CI cases alleging Unnecessary Force. Each complaint may allege more than one type of force. This accounts for 116 UF allegations and the 112 types of alleged unnecessary force.

TYPE OF ALLEGED UNNECESSARY FORCE January 1 - December 30, 1996			
Hands	52	Knee	6
Feet	18	Car (officer)	3
Baton	11	Object	3
Tight Handcuffs	10	Canines	2
Chemical Agent	6	Gun (officer)	1



1997 GOALS

Complete the transition into a San José city office. Implement computer link-up to the PSCU. Revised, create, and analyze audit forms as well as IPA policies and procedures.



RECOMMENDATIONS MADE BY THE IPA



In 1996, the IPA formally and informally made recommendations regarding the San José Police Department. The following chart summarizes the main issues raised in 1996 and their related status.

ISSUES RAISED:	DISPOSITION	ISSUES CONCLUDED IN:
1996 Midyear Report		
Connect IPA to the City of San José's internet network	Pending	
Conduct intake investigation of complaints lacking a signed Boland Admonishment	Adopted	1996 Midyear Report
Retain name of officer where Boland Admonishment is not signed (but need not place in personnel file)	Pending	
Complaint classification should more appropriately reflect the nature of complaint	Adopted	1996 Midyear Report
Assist in the implementation and design of a new computer system	Adopted	1996 Midyear Report
1996 Year End Report		
Implement process for responding to citizen's request for officer identification	Pending	
Establish Class I and Class II use of force categories	Adopted	1996 Year End Report
Complete Class I use of force investigations within 180 days	Adopted	1996 Year End Report
Complete all investigations of citizen complaints within 365 days	Adopted	1996 Year End Report
Update IPA's authority to audit relevant DI cases	Pending	

To file a complaint against a SJPD officer, contact:

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OR

THE PROFESSIONAL STANDARDS & CONDUCT UNIT

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**We welcome your comments about
this newsletter!!**



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